

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY PARIS

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E.O. 11652: N/A

TAGS: CPRS, PFOR, FR

SUBJECT: EXTRADITION - HOLDER/KERKOW

REF: PARIS 7588

1. DEPARTMENT CONCURS IN EMBASSY'S CHARACTERIZATION OF
INEQUITIES RELATED TO ASSISTANCE IN ARTICLE 6 OF THE EXTRADITION TREATY.

2. THE OBVIOUS INEQUITIES IN ASSISTANCE AFFORDED USG COMPARED TO THOSE AFFORDED GOF UNDER TREATY DEMONSTRATED BY THIS CASE REQUIRE DEPARTMENT TO RETHINK POLICY OF ASSISTANCE UNDER ARTICLE VI. USG IS HAPPY TO REPRESENT GOF BEFORE US COURTS IN EXTRADITION CASES AND IT IS USG POLICY TO DO SO. WE UNDERSTAND THE PROBLEMS RELATED TO HIRING PRIVATE ATTORNEYS TO REPRESENT THE GOVERNMENTAL INTERESTS IN AN EXTRADITION CASE, AND WE UNDERSTAND GOF REASONS FOR REQUESTING THE CHANGES REFLECTED IN ARTICLE VI. NEVERTHELESS,

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LESS, GIVEN THE PRESENT GOF INTERPRETATION OF ARTICLE VI USG WAS CLEARLY BETTER OFF UNDER OLD TREATY. GOF IS REPRESENTED

SENTED IN THE ADVERSARY -- COMMON LAW SENSE BEFORE THE US COURTS WHILE USG RECEIVES NO REPRESENTATION WHATSOEVER BEFORE FRENCH COURTS. UNDER OLD TREATY WE WOULD HAVE HAD REPRESENTATION AND COULD HAVE REPLIED TO DEFENSE ALLEGATIONS.

BECAUSE OF THESE INEQUITIES, DEPARTMENT BELIEVES IT IS NECESSARY TO HAVE A MEETING WITH APPROPRIATE GOVT AUTHORITIES, AND TO JUSTICE SO AS TO DETERMINE WHERE WE STAND ON THIS POINT AND TO ATTEMPT TO FIND A SOLUTION TO OUR PROBLEM SHORT OF DENOUNCING THIS PART OF TREATY AND GOING BACK TO OLD TREATY LANGUAGE REGARDING ASSISTANCE BEFORE THE COURTS. WE SHOULD AT LEAST MAKE IT CLEAR THAT WE WILL LIMIT OURSELVES TO THE SAME "ASSISTANCE" AS WE ARE RECEIVING FROM THEM. IT SHOULD BE EMPHASIZED THAT UNDER OUR SYSTEM IF WE ONLY DID WHAT THEY HAVE DONE BY WAY OF "ASSISTANCE" THEIR EXTRADITION CASES WOULD HAVE ABSOLUTELY NO CHANCE OF SUCCESS BEFORE OUR COURTS. KISSINGER

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